In the High Court of Judicature at Madras

Dated: 08/10/2003

Coram

The Honourable Mr.Justice A.K.RAJAN

Writ Petition No.26414 of 2001
and
W.P.M.P.No.39067 of 2001

The Nilgiri Dairy Farm Limited
rep. by its Branch Manager
P.M.Natarajan
No.58, Dr.Radhakrishnan Road
Mylapore
Chennai.4. ..... Petitioner

-Vs-

1. The Superintending Engineer
CEDC Cetnral
TNEB
Valluvarkoottam SS Complex
Chennai.34.

2. The Executive Engineer/Distribution
Mylapore/TNEB
60, Godia Mutt aRoad
Mylapore
Chennai. ..... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus as stated therein.

For petitioner : Mr.N.L.Rajah

For respondents : Mr.G.Vasudevan

:O R D E R

The petitioner filed the above writ petition praying to issue a writ of Mandamus directing the second respondent to refer the dispute between the petitioner and TNEB in respect of second respondent's assessment order No.EE/OYM/Mylapore/AAO/FDOC/D5175/01 dated 21.12.2001 for meter bearing No.125:03:54 to the first respondent, as per Clause 1 7.13 of the terms and conditions of electricity supply without insisting on payment of the first six

installments.
2. The brief facts that are necessary for the disposal of the writ petition is that the petitioner is having service connection bearing No.125-03-54 which provides electricity supply to the petitioner's business opeation at No.58, Dr.Radhakrishnan Road, Mylapore, Chennai.4 , and is very prompt in payment of electricity bills. While so, on 03 .03.2000, the second respondent served a demand notice to the petitioner directing him to pay a sum of Rs.30,70,310/-; that there were no details of the demand and the nature of the claim by the respondents Board. Challenging the said demand notice, the petitioner filed W.P. No.8884 of 2000, ultimately the proceedings culminated in an order passed by this Court in W.A.No.8255 of 2001 thereby this Court quashed the order of demand dated 03.03.2000 and directed the respondents Board to hear the petitioner before any further orders are passed in the above matter. Pursuant to that, the second respondent issued a show cause notice to the petitioner dated 03.12.2001, conducted enquiry on 10.12.2001 at 15.00 hours, and the petitioner also submitted his written argument at the time of enquiry. Thereafter impugned order was passed on 21.12.2001 wherein the respondents Board refused to accept the petitioner's contentions and has held that the petitioner is due to pay a sum of Rs.24,44,221/- instead of Rs.30,70,310/- demanded earlier, and the petitioner was directed to make this payment in fifteen equal installments. The petitioner has also been informed by the second respondent that the petitioner has sixty days time to file an appeal before the first respondent, and the petitioner should pay six installments as a pre deposit in order that the appeal may be entertained. For which the petitioner by letter dated 27.12.2001 informed the second respondent that no appeal is contemplated under the terms and conditions of electric supply and that under clause 17.13 of the terms and conditions of Electricity Supply, the second respondent is statutorily bound to refer the matter to the Superintending Engineer without demanding any pre deposit. Since there is no reply, the petitioner has come forward with the above writ petition.
3. Respondents filed counter-affidavit denying the contentions raised by the petitioner and contended that the service connection to the petitioner was effected on 24.08.1983, after executing necessary agreement. The petitioner was paying the C.C.charges regularly as per bills issued. During the course of audit dated 01.03.2000, it is pointed out that there is a shortage in the current consumption charges from 10/1997 to 12/1999 ; the resultant loss worked out to Rs.30,70,310 /-; that the petitioner represented to set aside the demand stating that due to cable fault they experienced low voltage in their letter dated 23.03.2000; consequent to that they used Generator sets. The second respondent has passed the impugned order as per the direction of this Court. Hence, the writ petition is liable to be dismissed.
4. Heard both sides.
5. Section 26(6) of the Indian Electricity Act, 1910, reads as follows:
Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such inspector shall estimate the amount of the energy supplied to the

consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:
Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days, notices of his intention so to do.
Like wise Clause 17.13 of the Terms and Conditions of Tamil Nadu Electricity Board reads as follows:
Clause 17.13 : In case the consumer does not agree with the assessment made by the Assistant Executive Engineer/Executive Engineer, the matter may be referred to the Executive Engineer/Superintending Engineer whose decision shall be final and binding on the consumer.
6. On a perusal of Section 26 (6) of the Indian Electricity Act, 1910 and Clause 17.13.of of the Terms and Conditions of Supply of Electricity of Tamilnadu Electricity Board framed under Section 49 of the Electricity (Supply) Act, 1948, it appears that whenever defects are found in the meter and the consumer disputes the assessment, the matter shall be referred to the first respondent, that is the rule and that is the prayer in the writ petition. In the circumstances, there is no reason to reject the prayer of the petitioner.
7. In the result, the writ petition is allowed as prayed for directing the second respondent to refer the matter to the first respondent without insisting upon the payments ordered to be paid by the petitioner as pre-deposit. No costs.

Index : Yes

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